

# Order

Michigan Supreme Court  
Lansing, Michigan

March 28, 2007

Clifford W. Taylor,  
Chief Justice

132582

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 132582  
COA: 272373  
Muskegon CC: 05-051798-FH

DANIEL GLEN HORAN, JR.,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the October 16, 2006 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Muskegon Circuit Court and we REMAND this case to the trial court for resentencing. It is undisputed that OV 13 (Continuing Pattern of Criminal Behavior) was incorrectly scored, and that correcting the score reduces the applicable guidelines range. The trial court departed upward from the guidelines, but did not declare that it would impose the same sentence regardless of the offense variable scoring. Rather, the court based the extent of the departure on the guidelines range. It is unclear that the trial court would have departed to the same extent under the correctly scored guidelines. Therefore, *People v Mutchie*, 468 Mich 50, 51 (2003), does not apply. On remand, the court may again depart from the appropriate sentencing guidelines range by articulating a substantial and compelling reason for the departure in accordance with *People v Babcock*, 469 Mich 247, 268 (2003). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 28, 2007

*Corbin R. Davis*

Clerk